

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION
THIS DOCUMENT RELATES TO J&J CLASS 1

Master Civil No. 01-cv-12257

MDL No. 1456

Judge Patti B. Saris

CLASS COUNSEL’S MOTION FOR SANCTIONS AGAINST DON HAVILAND

Pursuant to 28 U.S.C. § 1927, Class Counsel respectfully move this Court for an order entering sanctions against Don Haviland. As grounds for this request, Class Counsel state as follows:

1. On March 26, 2010, Don Haviland filed a Notice of Voluntary Dismissal, seeking to dismiss without prejudice the “individual claims” of plaintiffs Larry Young, on behalf of the Estate of Patricia Young, and Ken Wright, the co-executor of the Estate of Therese Shepley, on behalf of the Estate of James Shepley (collectively hereafter “Withdrawing Plaintiffs”). *See* Dkt. No. 7013.

2. Since being added to the Third Amended Class Action Complaint on October 17, 2005, the Withdrawing Plaintiffs – or their predecessors in interest – have always indicated their intention to litigate the case against J&J to the end. In this regard, they filed the Notice of Appeal of this Court’s entry of judgment against Class 1 and in favor of J&J, were involved in the recently-failed mediation efforts with J&J and were advised of the status of the briefing of J&J’s post-remand motions for summary judgment.

3. Mr. Haviland filed the Notice of Withdrawal without notice to Class Counsel and yet *knowing* that the hearing on J&J’s post-remand motions for summary judgment was “coming

up.” Mr. Haviland has represented to Class Counsel that his clients have tired of the litigation and that they have been discouraged by Class Counsel’s alleged failure to communicate with them. This Court should not take seriously Mr. Haviland’s apparent claim that, three business days before the hearing on J&J’s motions for summary judgment, both Withdrawing Plaintiffs suddenly and simultaneously developed a distaste for proceeding with this litigation that they did not have for the past four-and-a-half years when they were involved in this litigation.

4. While it may permit these clients to withdraw if it is satisfied that they do not wish to proceed, this Court should sanction Mr. Haviland for his role in deliberately accomplishing this withdrawal in a manner that would most prejudice the Class and Class Counsel. Under Rule 41(a)(2) of the Federal Rules of Civil Procedure “an action shall not be dismissed at plaintiffs instance save upon order of the court and upon such terms and conditions as the court deems proper.” Furthermore, Section 1927 permits sanctions to be awarded against attorneys who “multipl[y] the proceedings ... unreasonably and vexatiously.” 28 U.S.C. § 1927. Here, Mr. Haviland’s withdrawal of the only Class 1 Representatives against J&J just days before this Court was to hear oral argument on post-trial, post-remand motions for summary judgment can be easily found to be a studied disregard of the need for an orderly judicial process.

WHEREFORE, for all the reasons set forth above and in Class Counsel’s accompanying Memorandum, Class Counsel respectfully request that this Court enter an order awarding attorneys’ fees and costs against Mr. Haviland, and all other relief that this Court deems just and appropriate.

DATED: April 16, 2010

Respectfully submitted,

By: /s/ Steve W. Berman

Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

Liaison Counsel

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Kenneth A. Wexler
Jennifer Fountain Connolly
Wexler Wallace LLP
55 W. Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Jeffrey L. Kodroff
John A. Macoretta
Spector, Roseman, Kodroff & Willis P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Marc H. Edelson
Edelson & Associates, LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, *Class Counsel's Motion for Sanctions Against Don Haviland* to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on April 16, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman